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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Tariff Filing Requirements for Nondominant Common Carriers	)	CC Docket No. 93-36

REPLY COMMENTS OF
AD HOC TELECOMMUNICATIONS USERS COMMITTEE

The Ad Hoc Telecommunications Users Committee (Ad Hoc Committee) hereby submits its reply comments in response to the Notice of Proposed Rulemaking (NPRM) released by the

vitiating the binding nature of contracts that ought to be its backbone. Many other parties also recognized this danger. Like the Ad Hoc Committee, they proposed specific measures for assuring the enforceability of contracts while allowing the marketplace to function freely through the maximum streamlining mechanism. The Ad Hoc Committee supports all such measures that have been proposed.

The Ad Hoc Committee opposes one other set of comments, however.[1/] We oppose the opportunistic (but predictable) efforts of several RBOCs to use this proceeding as a forum for renewing their own claims to pricing flexibility. This proceeding is not about carriers with market power, and nothing in either the NPRM or the record

proceedings that are now ongoing, where the Commission can practicably rule on their merits.[2/]

I. CUSTOMER CONCERNS UNDERSCORE THE NEED TO PROTECT AGAINST UNILATERAL CARRIER ABROGATIONS OF CONTRACTS.

The Ad Hoc Committee pointed out in its initial comments the need to assure that contracts in the interexchange marketplace are not inadvertently rendered nullities by the Commission's streamlining policy. Carriers

must take measures to prevent such abrogations lest the marketplace be irreparably crippled.

All these customers' positions support the Ad Hoc Committee's call for strong procedural and substantive protections against such abrogations. Several propose specific remedies that were not mentioned in the Ad Hoc Committee's initial comments, and with these we wholeheartedly concur. For example, TCA, Arinc and the Networks propose that, when a carrier prepares to file tariff changes that would modify long-term agreements, it should not only be required to expressly identify these modifications to the Commission, it should also be required to provide affected customers with fifteen days' advance notice of the filing. TCA Comments at 7; Arinc Comments at 6-7; Capital Cities/ABC, Inc., et al. ("Networks") Comments at 5. TCA also urges the Commission to make clear that if any such tariff changes are allowed to take effect, any affected customer will have the absolute right to terminate its arrangement without liability. These measures are fully justified as a means of assuring the marketplace the maximum feasible stability of contract -- and assuring customers that they will not become the victims of surprise changes to their long-term arrangements.[3/] They will also help the

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3/ Prior to January 28 of this year, many of these agreements were memorialized only in off-tariff contracts, pursuant to the Commission's long-standing forbearance policy. Most OCCs filed tariffs on or

(continued...)

Commission's processes by encouraging negotiation between carriers and affected customers before filings are made.

The user commenters also support the position of the Ad Hoc Committee that, when a carrier files a tariff revision that would modify existing long-term agreements without the consent of all affected customers:

- The carrier should be required to identify in its filing the changes to long-term arrangements that it seeks to make, and should state what it believes constitutes substantial cause for such changes. See ICA Comments at 7; Networks Comments at 5. 4/

- The filing should be made with a lengthened notice period. The Ad Hoc Committee recommended forty-five days; others, such as TCA (Comments at 7), propose a full 120 days. Certainly, 120 days' notice would increase the ability of the staff to make a prima facie review of the filing to determine whether the appropriate action is suspension and investigation and out-and-out rejection.

3/ (...continued)
about January 28 intended to bring such arrangements under the tariff aegis. But whether tariffed or off-tariff, such agreements can be unilaterally changed by carriers -- to the detriment of the marketplace -- unless the Commission takes affirmative steps to prevent it.

4/ Sprint urges the Commission to retain the existing

- The Commission should, as a matter of course, suspend and investigate all such filings. See ICA Comments at 2-3; TCA Comments at 8; Networks Comments at 5-6. As suggested above, the Commission should also use the rejection mechanism where the purported substantial cause justification is missing, is inadequate on its face or is conclusively refuted in petitions opposing the filing.

The need to establish definitive measures to protect the enforceability of long-term agreements is critical at this juncture in the evolution of the competitive marketplace. The advent of 800 number portability and fresh look has many customers examining their choices with unprecedented intensity and comprehensiveness. If customers are unable to assure themselves that long-term arrangements with nondominant carriers will actually bind the carriers, then they will be much less comfortable making plans that depend on the long-term performance of the carriers' obligation. The marketplace needs more certainty, and quickly.

II. DOMINANT CARRIERS' ATTEMPTS TO PIGGYBACK RATE FLEXIBILITY FOR THEMSELVES ONTO THIS PROCEEDING SHOULD BE REJECTED.

Several dominant carriers seek to use this proceeding as yet another pulpit for preaching increased rate flexibility for themselves. See, e.g., Southwestern Bell Corporation ("Southwestern Bell") Comments at 3-9; BellSouth Telecommunications, Inc. ("BellSouth") Comments, passim; Bell Atlantic Telephone Companies ("Bell Atlantic")

Comments at 2-7; Pacific Bell and Nevada Bell ("Pacific Companies") Comments at 3-17; AT&T Comments at 14-18.

The Commission need not waste its time addressing these contentions at this stage and in this proceeding. Both the LECs and AT&T have similar contentions currently pending before the Commission in other proceedings: the LECs in the transport rate docket and related dockets, and AT&T in the ongoing implementation of 800 number portability. As the Committee has made clear repeatedly elsewhere, the LECs have come nowhere near carrying their burden of proving that their services are subject to sufficient competition to justify further pricing flexibility. Any unbiased observer of the marketplace knows that exchange competition is only just emerging and remains too delicate to justify the cavalier freeing of the LECs.

As for AT&T, it already has fourteen-day streamlining for most of its services, and the Ad Hoc Committee has consistently supported streamlined regulation of AT&T's services where competition justifies it. But the function of this proceeding is to determine how most closely to approximate the status quo for nondominant carriers -- whose patent lack of any market power whatever is unquestioned -- rather than to decide whether now is the time for further streamlining of AT&T. There is no need to complicate this proceeding by grafting issues of AT&T's status onto it.

One of the RBOCs' points bears further mention. This is Southwestern Bell's contention that the disparate regulatory treatment of LECs and their nondominant competitors violates the Equal Protection clause of the Fourteenth Amendment! Southwestern Bell Comments at 3-5. Southwestern Bell has not asserted that the structure of the Commission's tariffing requirements implicates a fundamental right for equal protection purposes. Nor has it made a showing that gargantuan traditional monopolies are a "suspect class" entitled to special protection under the Equal Protection clause. Failing either of those two showings, the Commission need only have a rational basis for its distinction, and no one could deny that such a rational basis exists here. See e.g., L. Tribe, American Constitutional Law, Chap. 16 (2d ed. 1988). The fact that Southwestern Bell chose to lead off its comments with this rather frivolous argument is indicative of the amount of substance in the RBOCs' position overall.

III. CONCLUSION.

The initial comments demonstrate that the Commission can come closest to replicating a competitive marketplace by adopting its proposals for further streamlining of its regulation of nondominant carriers' tariff filings as long as it also adopts rules to preserve the sanctity of contract as the central driving mechanism of the marketplace. But the "me-too" comments of certain

dominant carriers should be rejected as serving only to confuse the clear issues presented herein. Those carriers can and should make their arguments at the appropriate time and place.

Respectfully submitted,

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